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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,230	06/21/2005	David L. Reynolds	12916-82	1625
45971	7590	03/10/2009	EXAMINER	
ERIC FINCHAM 316 KNOWLTON ROAD LAC BROME, QC J0E 1VO CANADA			WIEST, PHILIP R	
			ART UNIT	PAPER NUMBER
			3761	
			MAIL DATE	DELIVERY MODE
			03/10/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/540,230

Applicant(s)

REYNOLDS, DAVID L.

Examiner

Phil Wiest

Art Unit

3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Leslie Deak/
Primary Examiner, AU 3761

Continuation of 11, does NOT place the application in condition for allowance because:

The arguments filed 1/14/09 have been entered and considered, but have not been found persuasive.

In the reply filed 1/14/09, applicant argued that the instant claims are not anticipated by or obvious in view of Genese or Haber.

First, applicant argues that Genese does not teach the device as claimed. This argument has not been found persuasive.

Regarding the interpretation of "engaging the neck" of the vial, the instant claims refer to a "vessel having a body with a neck at one end thereof and the other end being open." A neck portion may be any portion cylindrical, longitudinally-extending wall of the vessel, and Genese clearly teaches a neckportion 18 extending to one end of the vessel and an opening at the opposite end. The inside walls of the neck of the vial is clearly engaged by the vial socket, as shown in Figures 1-3.

Regarding Genese's alleged lack of a housing having first and second ends with a bore extending therethrough, Genese clearly teaches a housing that is open at both ends, such that it can receive a piston and the vial at one end, and receive the vessel at the opposite end. Applicant also states that Genese's cannula 23 is not slidable within hub 25. However, Claim 1 states that the cannula is longitudinally slidable within the bore, not the hub. Genese clearly teaches a cannula 23 that is slidable within the bore (read: central opening) of the housing. See Figures 1-3.

Regarding Genese's alleged lack of a syringe body, Genese teaches a piston and cannula that, in combination, comprise a syringe body for transferring fluid between two containers (see Figure 5).

Second, Applicant argues that the instant claims are not unpatentable over Haber in view of Genese. This argument has not been found persuasive.

Regarding Haber's alleged lack of an assembly for transferring fluid between a vessel and a vial comprising a housing having first and second ends and a bore extending therethrough, Haber clearly teaches a housing 2 having first and second opposing ends and a bore (22, 90) extending therebetween.

Regarding Haber's alleged lack of a slidable piston, the piston (between spaces 90 and 104) is displaceable so as to displace the conduit 110, thereby establishing fluid communication between the vessel and the vial. See Figures 1 and 5. The piston is fully capable of being removed from the housing.

Regarding Haber's alleged lack of a vessel having a body with a neck at one end thereof and an open end at the opposite end thereof, the vessel has a cylindrical, longitudinally-extending portion that is engaged by the housing, and an opening at the end facing the housing, such that fluid communication may be established. The slidable piston moves to establish fluid communication through the system.

Regarding Haber's alleged lack of a conduit that is longitudinally slidable within the bore, Haber clearly teaches a conduit 90 attached to the slidable piston. The piston is fully capable of being removed from the housing. .